

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MG PREMIUM LTD.,

Plaintiff,

v.

THOMAS ZANG, et al.,

Defendants.

CASE NO. 3:20-cv-05134-BHS

ORDER ON MOTION FOR
DEFAULT JUDGMENT

THIS MATTER is before the Court on Plaintiff MG Premium Ltd.’s Motion for Default Judgment, Dkt. 36. MG Premium asserts that it is “among the world’s leading providers of premium adult entertainment content.” Dkt. 1 at 1. It alleges that Defendants Thomas Zang, Howard Stroble, Mathew Bradley, Michael Goal, and Mateusz Czajka operate two websites, yespornplease.com and vshare.io, that have willfully and illegally hosted and displayed MG Premium’s copyrighted audiovisual works. *Id.*

MG Premium sought and obtained from this Court permission to serve these defendants via email, under Federal Rule of Civil Procedure 4(h). Dkts. 20 and 23. It effected such service, Dkt. 33, and successfully moved for entry of default, Dkts. 32 and 34.

1 MG Premium now seeks a default judgment against each of the named
2 Defendants. Dkt. 36. It purports to demonstrate that Defendants have displayed 3,078 of
3 MG Premium’s copyrighted works, without license or other authority, on
4 yespornplease.com. Dkt. 37, Declaration of Jason Tucker (“Tucker Decl.”). 2,433 of
5 these video works were displayed after MG Premium registered them with the U.S.
6 Copyright Office. Dkt. 36 at 7. It alleges that the defendants did so willfully,¹ to generate
7 advertising revenue. *Id.* at 6–7. MG Premium also alleges that Defendants induced others
8 to infringe on its copyrighted works, actively encouraging users to post MG Premium’s
9 adult video content on Defendants’ sites. Dkt. 19 at 9.

10 MG Premium seeks statutory damages under the Copyright Act, 17 U.S.C.
11 § 504(c). It argues that because the infringement was willful, the Court should impose the
12 maximum per-work statutory damage award—\$150,000—to deter the great infringement
13 temptation posed by modern technology. Dkt. 36 at 7 (citing *Superior Form Builders,*
14 *Inc. v. Dan Chase Taxidermy Supply Co.*, 74 F.3d 488, 496–97 (4th Cir. 1996)
15 (sustaining maximum statutory damage award despite no proof of actual damages)).

16 MG Premium demonstrates that internet traffic to yespornplease.com is
17 “*extensive*,” amounting to an average of 3.2 million unique users per month for the 24
18 months preceding the lawsuit. *Id.* at 9 (emphasis in original). It argues that the most
19 modestly priced subscription to one of its sites, Brazzers, is \$9.99 per month. *Id.* Thus, it
20 claims, it “lost” revenue of \$727,232,000 during that period (assuming that those who

21
22 ¹ MG Premium’s Motion also alleges that Defendants “intentionally, knowingly,
negligently, or by willful blindness built a library” of infringing works. Dkt. 36 at 5.

1 accessed the copyrighted adult videos for free would otherwise have purchased a
2 subscription). *Id.* It does not purport to claim how much Defendants made by infringing
3 but offers the staggering sum as an analog for the works’ value, which Defendants
4 offered for free. *Id.*

5 MG Premium cites several cases for the proposition that maximum statutory
6 damages are warranted where the defendants acted willfully, Dkt. 36 at 10–12 (citing,
7 *inter alia*, *Perfect 10, Inc. v. Talisman Commc’ns., Inc.*, No CV99-10450 RAP MCX,
8 2000 WL 364813 (C.D. Cal. Mar. 27, 2000)). It emphasizes that Defendants must not be
9 able to “sneer in the face of copyright owners and copyright laws,” and that statutory
10 damages serve both a compensatory and a punitive purpose. *Id.* at 12 (quoting *Int’l*
11 *Korwin Corp. v. Kowalczyk*, 665 F. Supp. 652, 659 (N.D. Ill. 1987)). MG Premium also
12 argues that willfulness is demonstrated by the Defendants’ failure to appear and defend.
13 *Id.* (citing *Tiffany Inc. v. Luban*, 282 F. Supp. 2d 123, 124 (S.D.N.Y. 2003) (“By virtue of
14 the default, the [defaulting party’s] infringement is deemed willful.”)). MG Premium asks
15 the Court to impose the maximum statutory damage award, \$150,000, for each of the
16 2,433 infringing videos, for a total of \$364,950,000. Dkt. 36 at 20.

17 “In a case where the copyright owner sustains the burden of proving, and the court
18 finds, that infringement was committed willfully, the court in its discretion may increase
19 the award of statutory damages to a sum of not more than \$150,000.” 17 U.S.C. §
20 504(c)(2).

1 The Court has wide discretion in determining the amount of statutory damages to
2 be awarded within the ranges provided by 17 U.S.C. § 504(c)(1)–(2). *Harris v. Emus*
3 *Records Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984). It must do what is just in the
4 particular case, “considering the nature of the copyright, the circumstances of the
5 infringement and the like . . . but with the express qualification that in every case the
6 assessment must be within the prescribed [statutory range]. Within these limitations the
7 court’s *discretion and sense of justice* are controlling.” *See F.W. Woolworth Co. v.*
8 *Contemp. Arts, Inc.*, 344 U.S. 228, 232 (1952). “Statutory damages are particularly
9 appropriate in a case . . . in which [a] defendant has failed to mount any defense or to
10 participate in discovery.” *Jackson v. Sturkie*, 255 F. Supp. 2d 1096, 1101 (N.D. Cal.
11 2003). Further, “[b]ecause awards of statutory damages serve both compensatory and
12 punitive purposes, a plaintiff may recover statutory damages ‘whether or not there is
13 adequate evidence of the actual damages suffered by plaintiff or of the profits reaped by
14 defendant.’ *L.A. News Serv. v. Reuters Television Int’l, Ltd.*, 149 F.3d 987, 996 (9th Cir.
15 1998) (quoting *Harris*, 734 F.2d at 1335); *see also Getty Images (U.S.), Inc. v. Virtual*
16 *Clinics*, No C13-0626 JLR, 2014 WL 1116775 (W.D. Wash. Mar. 20, 2014).

17 MG Premium has established that Defendants willfully infringed its copyrights,
18 2,433 times, and an award of statutory damages is warranted and required. However, the
19 Court in its discretion declines to award the maximum per-video statutory damages.

20 First, while MG Premium has demonstrated that maximum statutory damage
21 awards are often affirmed when the infringement is willful, it has not cited a case making
22 or affirming a statutory damages award anywhere near the sum it seeks, particularly

1 against individual defendants. Further, MG Premium’s claimed lost revenue is
2 speculative; the 3.2 million users it cites admittedly did not pay Defendants the sum it
3 claims it charges for access to its adult videos. In other words, MG Premium did not lose,
4 and Defendants did not make, \$727 million when Defendants provided free access to MG
5 Premium’s protected works. \$365 million is similarly not a fair or accurate estimation of
6 any lost revenue, or of illicit profit.

7 The Court agrees that a large award also serves the laudable and important goal of
8 deterring infringement, but the amount sought is far more than “large,” it is obscene. The
9 deterrent effect of a more reasonable—but still massive—award will be adequate, even
10 though it is perhaps unlikely that any significant judgment will be paid. It is difficult to
11 imagine that the five individual defendants have the sort of assets required to pay the
12 judgment MG Premium seeks. Furthermore, the injunction MG Premium seeks will also
13 deter further infringement, and it is far more likely to be effective.

14 In its discretion and in the interests of justice, the Court will therefore award
15 statutory damages of **\$15,000** for each of the **2,433** offending videos, for a total of
16 **\$36,495,000**. The award is against the five individual defendants, jointly and severally.

17 MG Premium also seeks an injunction, arguing that monetary damages alone are
18 not adequate. The Copyright Act authorizes the Court to “grant temporary and final
19 injunctions on such terms as it may deem reasonable to prevent or restrain infringement
20 of a copyright.” 17 U.S.C. § 502(a). The Court may grant a permanent injunction where
21 the plaintiff demonstrates that (1) “it has suffered an irreparable injury;” (2) “remedies
22 available at law, such as monetary damages, are inadequate to compensate for that

1 injury;” (3) “considering the balance of hardships between the plaintiff and defendant, a
2 remedy in equity is warranted;” and (4) “the public interest would not be disserved by a
3 permanent injunction.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).
4 The Court does so in the exercise of its equitable discretion. *Id.*

5 MG Premium argues that it has demonstrated each of these elements, and the
6 Court agrees. As to irreparable harm., MG Premium has demonstrated that the
7 Defendants compete with it and that their infringement has caused a loss of market share,
8 customers, and good will. *See* Dkt. 36 at 13–15. It is also apparent that monetary
9 damages will not be adequate to prevent future infringement, or to stop the injuries MG
10 Premium is suffering. It is not likely that MG Premium will be able to collect its default
11 judgment. Furthermore, the balance of hardships in the absence of injunctive relief tilts
12 sharply toward the plaintiff, and the public interest is served by granting injunctive relief.
13 *See Apple Comput., Inc. v. Franklin Comput. Corp.*, 714 F.2d 1240, 1255 (3d Cir. 1983)
14 (“[I]t is virtually axiomatic that the public interest can only be served by upholding
15 copyright protections and, correspondingly, preventing the misappropriation of the skills,
16 creative energies, and resources which are invested in the protected work.”). In short, MG
17 Premium is entitled to a permanent injunction precluding Defendants from infringing on
18 its copyright-protected works.

19 MG Premium also asks the Court to order non-party Verisign, Inc. (the registry
20 for .com domain names) to disable the domain “yespornplease.com” and transfer it from
21 the defendants to MG Premium. Dkt. 36 at 17 (citing, *inter alia*, *China Cent. Television v.*
22 *Create New Tech. (HK) Ltd.*, No. CV 15-01869 MMM (AJWx), 2016 WL 6871281 (C.D.

1 Cal. Apr. 4, 2016); *DISH Network L.L.C. v. Dima Furniture, Inc.*, No. TDC-17-3817,
2 2019 WL 2498224 at *8–9 (D. Md. June 17, 2019)). The Court agrees, and will ORDER
3 that Verisign, Inc. DISABLE and TRANSFER Defendants’ domain name
4 “yespornplease.com” to plaintiff MG Premium.

5 Finally, MG Premium seeks a relatively modest \$34,874 in attorneys’ fees and
6 \$2,085 costs, for an additional \$36,959. These fees and costs appear reasonable in light of
7 the stakes and the effort reflected in the record, and the Court will order such an award of
8 fees and costs under 17 U.S.C. § 505.

9 The Clerk shall enter a JUDGMENT consistent with this Order and close the case.

10 **IT IS SO ORDERED.**

11 Dated this 1st day of March, 2022.

12
13 

14 BENJAMIN H. SETTLE
15 United States District Judge
16
17
18
19
20
21
22